

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

(petitioner)

DECISION

MDV-43/50631

PRELIMINARY RECITALS

Pursuant to a petition filed September 25, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Oneida County Dept. of Social Services in regard to a medical assistance divestment, a hearing was held on November 12, 2001, at Rhineland, Wisconsin.

The issue for determination is whether the county agency properly determined the petitioner's divestment period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Nancy Fedderly, ESS
Oneida County Dept Of Social Services
Oneida Avenue
PO Box 400
Rhineland, WI 54501

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Oneida County.
2. A decision rendered after a re-hearing held on July 19, 2001 found that the petitioner divested \$48,863.25. The county agency had earlier found that the petitioner divested \$229,726.50 in addition to the \$48,863.25. The petitioner never appealed the finding that he divested \$229,726.50.
3. The petitioner now wishes to challenge the earlier finding of a \$229,726.50 divestment.

DISCUSSION

The petitioner has received two previous hearings on the divestment now before me and was represented by a competent attorney each time. After the first hearing I found that the petitioner divested \$96,726.50. The county and the petitioner agreed that half of that amount was part of an earlier \$229,020 divestment so I issued a second decision that reduced the current divestment to \$48,863.25. *See* DHA Decision and Rehearing Decisions #MDV-43/58120. At the second hearing the petitioner's attorney contended that the divestment periods for the two divestments should be considered separately rather than as one divestment because this could potentially reduce the period of ineligibility by one month. I included in my order a provision that if the county's decision to count both divestment periods together affected the period of ineligibility the petitioner could appeal that narrow point.

Now, after two hearings in which his lawyer expressly admitted that the earlier \$229,726.50 divestment had never been challenged and thus was binding, the petitioner, though his son-in-law, contends that he never meant to waive this challenge and wishes it to be reopened. I decline because this challenge is well past the 45-limit for challenging adverse actions [§49.45(5) and 49.21(1), Stats.] and because the previous decision allowed the petitioner to only challenge whether the divestment periods should be considered together. The petitioner's attorney had the right to speak for him and he is bound by the attorney's actions. Any concern he has with his representation must be taken up with his attorney and not with the county agency or in front of the Division of Hearings and Appeals.

I note that because of the son-in-law's insistence that previously determined issues be discussed, he never addressed the issue of whether the divestment periods should run together. The *MA Handbook*, Appendix, §14.6.0 states that divestment amounts should be added together for "[t]ransfers with a penalty period that extends into the month immediately preceding a month in which there is another transfer." Clearly the \$229,726.50 divestment period runs into the later divestment period. Therefore, the county agency properly added the two periods together when determining the petitioner's period of ineligibility.

The petitioner's son-in-law is warned that §HA 3.08(1)(e), Wis. Adm. Code, gives the administrative law judge the right to exclude disruptive persons from a hearing. If he requests another hearing and conducts himself as he did in the most recent telephone hearing I will exercise this right.

CONCLUSIONS OF LAW

The county agency correctly added the petitioner's \$229,020 and \$48,863.25 divestments together when determining his period of ineligibility.

NOW, THEREFORE, it is **ORDERED**

That the petition herein be and the same hereby is dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau
Claire, Wisconsin, this 19th day of
December, 2001.

/s Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
27/MDO